IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 179 OF 1996

IN

WRIT PETITION NO. 1964 OF 1996

Triochem Products Limited)
a Public Limited Company registered)
under the Indian Companies Act, 1956)
having its Registered Office at)
Sambhava Chambers, 4th Floor,)
Sir P.M. Road, Bombay 400 001)
and Factory at 10/2 MIDC Industrial)
Area, Village Morivali,)
Ambernath 421 501.) .. Appellant

Versus

1. Mr.Bacchansingh Gayasing)
residing at c/o R.B. Singh Bros.)
Timber Merchants, Buwapade,)
Badlaparu Road, Ambernath 421 505)
Dist. Thane.)

2. Shri S.N. Kamble)
Presiding Officer, Ist Labour Court,)
having his office at Meher Traders,)
2nd Floor, Plot No.7, Road No.21,)
Wagle Estate, Thane.).. Respondents

Mr.P.K. Rele with Mr.S.S. Pakale for the Appellant.

Mr.V.K. Pradhan for Respondent No.1.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 22ND SEPTEMBER 2005

ORAL JUDGMENT : (Per H.L. Gokhale, J.)

1. Heard Mr.Rele in support of this Appeal.

Mr.Pradhan appears for Respondent No.1.

2. This Appeal seeks to challenge the order passed by a Single Judge on 8th July 1996 dismissing the Writ Petition filed by the Appellant herein. The Appellant had filed that Writ Petition to challenge the Award of the Ist Labour Court, Thane dated 16th December 1995 in Reference (IDA) No.66 of 1987. That Award has allowed the Reference made by Respondent No.1 herein. The Award set aside the action of the Appellant Management in not allowing the 1st Respondent to resume duty from 19th May 1986 and striking him down from the muster roll by letter dated 30th July 1986. The Court had directed reinstatement of the 1st Respondent with full back wages, which order has been confirmed by the learned Single Judge by dismissing the Appellant's writ petition.

3. The short facts leading to this Appeal are as follows:-

(a) The 1st Respondent was working in the Pharmaceutical Division of the Appellant as a helper since about October 1982. He proceeded on earned leave from 12th January 1986 for a period of one month. He was to come back and resume on 12th February 1986, but did not report on duty. He sent a registered letter on

7th May 1986 requesting that he may be allowed to resume duty within 4 days from the date of receipt of that letter which was received by the Appellant on 15th May 1986. The 1st Respondent joined with a medical certificate. The Appellant asked him to report for work in the Bulk Drug Department. The 1st Respondent however declined to report there. As far as his being asked to join in the other department is concerned, that is not disputed and it is accepted by the 1st Respondent in his letter to the Labour Officer dated 2nd June 1986. It is the further case of the Appellant that they wrote to the 1st Respondent asking him to join by sending a registered letter dated 10th June 1986 and informing him that if he did not join, his name will be removed from the muster roll. The 1st Respondent did not join in spite of that letter and therefore the Appellant struck off his name from the muster roll.

(b) The 1st Respondent therefore raised a dispute which was referred to the Labour Court. Evidence was led by the parties. The learned Judge of the Labour Court took a view that the action of the management in not allowing the 1st Respondent to join in the particular department was uncalled for. Hence, the learned Judge held that disallowing him to resume on duty and thereafter striking off his name was illegal.

The learned Judge therefore directed the reinstatement of the 1st Respondent on his parent job with continuity in service and full back wages.

(c) The Appellant herein challenged this order by filing a writ petition. A learned Single Judge of this Court, who heard the matter, held that the services of the 1st Respondent were terminated when he was on privilege leave, that no domestic enquiry was held and that there was no evidence to show that the workman was asked to resign. The learned Judge also held that the letter of 10th June 1986 did not indicate that the workman was asked to work in a particular department and that he was charged with absenteeism. The learned Judge therefore rejected the petition.

4. Being aggrieved by the aforesaid order, the Appellant filed this Appeal. It came up for consideration before a Division Bench which directed the Appellant to deposit 50% of the back wages. As far as the reinstatement is concerned, the learned Judges did not grant any stay by their order passed on 27th November 1996 since the 1st Respondent workman had already been reinstated in service by that date.

5. Mr.Rele, learned counsel appearing for the

Appellant, submitted that although the learned Single Judge referred to the letter dated 10th June 1986 in his order and stated that it did not indicate that the workman was asked to work in a particular department, the letter written earlier on 2nd June 1986 by the 1st Respondent workman to the Labour Officer was lost sight of. This letter by the workman himself recorded that he was asked to join in another department. Thus, as far as allowing the 1st Respondent workman to join on duty is concerned, Mr.Rele submitted that the Appellants were always ready and willing to allow the 1st Respondent to join but the 1st Respondent however insisted that he should be allowed to join in his earlier department which was not possible.

6. Mr.Pradhan, learned counsel for the 1st Respondent workman, on the other hand, submitted that there was nothing to indicate as to why the 1st Respondent could not resume in his earlier department. Besides, no enquiry had been held and no opportunity was given to him and, therefore, in his submission, the order passed by the Labour Court as well as the learned Single Judge was correct one.

7. We have noted the submissions of both the counsel. There is a merit in the submission of Mr.Rele

to a limited extent in the sense that the 1st Respondent, who was working as a helper, could not be said to have any specialised knowledge to work in a particular department and there was no reason for him to insist that he should be allowed to join in his earlier department. At the same time, it is also to be noted, as held by the learned Single Judge, that the 1st Respondent workman did not get any opportunity to defend himself which has been the legal position when it comes to holding that a workman has abandoned his job. This is a case where it can be certainly said that part of the blame would lie on the 1st Respondent workman also. Hence, in our view, although the Labour Court was right in directing reinstatement, 50% back wages would have been sufficient which has been done by the Appellate Court while admitting this Appeal.

8. We are told that the Appellant Company did deposit 50% back wages and the 1st Respondent workman has already withdrawn that amount. We are further told that the Appellant Company is now completely defunct and not working since 30th November 1999. The 1st Respondent had resumed in the meanwhile and had worked till that date. Mr.Rele states that he has been paid his legal dues when the factory was closed down. Mr.Pradhan disputes that. It will be open for the 1st

Respondent to lodge his claim for that purpose if he so desires.

9. In the circumstances, we allow this Appeal in part and substitute the order passed by the learned Judge of the Labour Court by holding that reinstatement with 50% back wages would be the proper order. It has also been observed by the Apex Court recently in Allahabad Jal Sansthan v. Daya Shankar - 2005 II C.L.R. 453 that it is desirable to arrive at golden mean in such matters and full back wages is not necessarily the rule.

10. Appeal allowed in part with no order as to costs.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)